

REMARKS

Claims 124-143 were pending in the present application. Applicants have canceled claim 124 without prejudice, amended claim 125 and introduced new claim 144. Support for the amendment to claim 125 can be found, *inter alia*, on page 32, lines 25-26 of the original specification. Support new claim 144 can be found, *inter alia*, on page 32, line 32-36 of the original specification. Therefore, the present Amendment is fully supported by the original specification and does not raise any issue of new matter. Accordingly, entry of the present Amendment is respectfully requested. Upon entry of the present Amendment, claims 125-144 will be under examination.

Moreover, a petition to correct inventorship will be filed shortly to change the inventorship of the present application from the joint inventorship of Zheng J. Li and Andrew W. Trask to the joint inventorship of Zheng J. Li, Andrew W. Trask, Richard Todd Darrington and William N. Soby.

In addition, Applicants have filed a Terminal Disclaimer on July 8, 2005 with regard to U.S. patent application No. 10/650,252 filed on August 27, 2003, U.S. patent application No. 10/652,655 filed on August 28, 2003 and U.S. patent application No. 10/652,933 filed on August 28, 2003. Therefore, the outstanding rejection based on the judicially created doctrine of obvious-type of double patenting is moot.

Applicants further request that special handling be given to the present application under M.P.E.P. Section 1309(A) when it is in condition for allowance as the present application was made special by the Director. M.P.E.P. Section 1309 also states that "to ensure that any application falling within the scope of the categories outlined above and identified by (A) to (E) receive special treatment, the examiner should e-mail or otherwise contact the Image Assistance Center in the Office of Patent Publication for special treatment."

REJECTION OF CLAIMS UNDER DOUBLE PATENTING

Claims 124-143 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 126-145 of co-pending application No. 10/652,933.

Applicants have canceled claim 124 without prejudice. Applicants have also filed, on July 8, 2005, a Terminal Disclaimer with regard to U.S. patent application No. 10/650,252 filed on August 27, 2003, U.S. patent application No. 10/652,655 filed on August 28, 2003 and U.S. patent application No. 10/652,933 filed on August 28, 2003. Therefore, this ground of rejection is moot.

REJECTION OF CLAIMS UNDER 35 U.S.C. 102(a) AND/OR 35 U.S.C. 103(a)

Claims 124-143 stand rejected under 35 U.S.C. 102(a) as being anticipated by or, in the alternative, under 35 U.S.C. 103(a) as being obvious over Singer et al., U.S. Patent No. 6, 365,574 (“Singer”).

Applicants have canceled claim 124 without prejudice and added new claim 144 to emphasize that the claimed dosage form comprises from about 1% to about 70% of substantially pure Form F azithromycin. Applicants respectfully submit that Singer does not teach or suggest any pharmaceutical dosage form comprising substantially pure Form F azithromycin and pharmaceutically acceptable carrier or diluent. Therefore, Singer does not anticipate any of the pending claims 125-144 because Singer does not teach or suggest each and every element of these claims.

Applicants will file a petition to correct inventorship to add Richard Todd Darrington and William N. Soby as co-inventors. Applicants also enclose a 131 Declaration from Richard Todd Darrington showing that the claimed pharmaceutical dosage form was reduced to practice prior to May 8, 1998, prior to the earliest priority date of Singer. Therefore, Singer is not a proper reference against pending claims. Accordingly, this ground of rejection is moot.

CONCLUSION

Applicants respectfully request entry of the present Amendment and favorable consideration of all pending claims. Applicants respectfully submit that the present application is condition for allowance pending the completion of Applicants' petition to correct inventorship.

It is believed that no fee is deemed necessary in connection with the filing of the present Amendment. However, if any fees are required, the Commissioner is hereby authorized to charge any such fees to our Deposit Account No. 16-1445.

Respectfully submitted,

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